

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID RUSSELL MYRLAND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. C15-0100RSM

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS

This matter comes before the Court on Respondent's Motion to Dismiss. Dkt. #4. Petitioner, David Myrland, brought a motion/petition pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, alleging that his sentence is void because of actual innocence, and alleging that the crime of which he was convicted is invalid because the statute under which he was convicted is void. Dkt. #1. In response, the Government has moved to dismiss the motion/petition, arguing that it is untimely, having been filed after the one-year statute of limitations; and, in the alternative, that Petitioner is barred from raising these arguments now because they were considered (and rejected) on direct appeal to the Ninth Circuit Court of Appeals. Dkt. #4.

1 Petitioner has failed to respond to the Government's motion.¹ "If a party fails to file
2 papers in opposition to a motion, such failure may be considered by the court as an admission
3 that the motion has merit." Local Rule CR 7(b)(2). As a result, Petitioner has also failed to
4 meet any threshold requirement demonstrating evidence of actual innocence or that the one-
5 year time bar should be waived in his case. Likewise, he fails to make any showing with
6 respect to why his previously-adjudicated claims should be heard on this collateral attack.
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8 Accordingly, the Court hereby finds and ORDERS that Respondent's Motion to
9 Dismiss (Dkt. #4) is GRANTED and this case is now CLOSED.

10 DATED this 20th day of February 2015.

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13 RICARDO S. MARTINEZ
14 UNITED STATES DISTRICT JUDGE
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26 ¹ Because Petitioner's counsel has continued to improperly file documents in the related
27 criminal case, CR11-0057RSM-1, rather than the instant civil matter, the Court has examined
28 both dockets for any response, but has found none. Petitioner's counsel is reminded again that
any documents related to the instant matter MUST be properly filed under the civil cause
matter or they will not be considered by the Court.